United Nations CCPR/C/VNM/Q/3

International Covenant on Civil and Political Rights

Distr.: General
16 August 2018

Original: English
English, French and Spanish only

Human Rights Committee

List of issues in relation to the third periodic report of Viet Nam*

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. With reference to paragraph 35 of the State party's report (CCPR/C/VNM/3), please clarify the status of the Covenant in the domestic legal system and in particular whether its provisions can be invoked directly before the courts. Please provide information on the measures taken to ensure (a) the primacy of the Covenant over national law; (b) that the national legal framework is fully consistent with the Covenant; (c) that domestic interpretations of the rights in the Covenant are consistent with the Covenant; and (d) that the use of article 14 (2) of the Constitution does not limit the scope of the rights in the Covenant, in particular in relation to the concept of "national security". Please provide information on the practical application of the provisions of the Covenant in the domestic legal system, including examples of cases in which the provisions of the Covenant have been referred to by national courts. Please also specify the measures taken to ensure that information on the Covenant is disseminated among judges, lawyers, prosecutors, law enforcement officials and the general public.

2. With reference to paragraphs 44–45 of the State party's report, please provide further information on the availability and accessibility of remedies for individuals claiming violations of the rights contained in the Covenant and the Constitution. With regard to paragraph 47 of the report and to the Committee's previous concluding observations (CCPR/CO/75/VNM, para. 11), please provide information on the measures taken to establish a permanent independent human rights monitoring body with adequate powers and resources to effectively receive and investigate allegations of human rights violations. Please provide information on the mandate and functioning of the national Human Rights Steering Committee. With reference to paragraph 23 of the State party's report and to paragraph 6 of the Committee's previous concluding observations, please provide further information on the concrete steps that have been taken towards acceding to the Optional Protocol to the Covenant.

Non-discrimination and gender equality (arts. 2, 3, 20 and 26)

3. With reference to paragraphs 36–47 of the State party's report, please indicate whether any steps have been taken to adopt comprehensive anti-discrimination legislation that, inter alia, (a) addresses discrimination in the private sphere; (b) prohibits all direct and indirect discrimination and multiple forms of discrimination; (c) contains a comprehensive list of prohibited grounds for discrimination, including race, colour, sex, political or other

* Adopted by the Committee at its 123rd session (2–27 July 2018).

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opinion, property, birth, sexual orientation, gender identity, health and other status; and (d) provides for effective remedies in judicial and administrative proceedings. Please provide information on the measures taken to enforce the non-discrimination provisions already existing in domestic law, in particular regarding women, persons with disabilities, people living with HIV and ethnic minorities. Please report on the steps taken towards legal recognition of same-sex couples and provide information on existing or planned legal frameworks pertaining to the rights of transgender persons that ensure they are not subject to discrimination.

4. Please elaborate on measures taken to identify laws that directly and indirectly discriminate against women, with a view to revising such laws. Please provide information on the impact of the policies and programmes referred to in paragraph 52 of the State party's report on achieving gender equality in practice, including on eradicating stereotypes regarding the role of women in the family and in society. Please also report on additional measures taken to enhance the representation of women in public and political life, including in legislative and executive bodies, especially in decision-making positions. Please provide information on the measures taken to eliminate discrimination against women, for example in the forthcoming 2019 Labour Code and in provisions concerning the retirement age.

5. With reference to paragraphs 190–191 of the State party's report, please clarify whether hate speech is prohibited by law and the measures taken to investigate, prosecute and, if convicted, punish members of organizations, such as the "Red Flag Associations", or others involved in propaganda activities that promote and incite religious discrimination, violence and hate speech.

Violence against women (arts. 2, 3, 6, 7 and 26)

6. With reference to paragraph 14 of the Committee's previous concluding observations and paragraphs 59–60 of the State party's report, please provide information on additional measures taken to combat violence against women, including domestic violence, particularly regarding (a) promoting a better understanding of the 2007 Law on Domestic Violence Prevention and Control of Violence and raising awareness among women of their rights and existing avenues for seeking assistance and protection; (b) encouraging the reporting of cases of domestic violence and the removal of all direct or indirect barriers to such reporting; and (c) prompt and effective investigation of cases of violence against women, the appropriate punishment of perpetrators and the provision of adequate remedies to victims. Please also provide information on the measures taken to prevent and combat sexual violence against women and on the steps taken towards criminalizing marital rape.

State of emergency and counter-terrorism measures (arts. 2, 4, 7, 9 and 14)

7. With reference to paragraph 61 of the State party's report, please provide information on the compliance of the existing regulations governing states of emergency with article 4 of the Covenant, clarifying in particular whether derogations from non-derogable provisions of the Covenant during states of emergency are explicitly prohibited. With reference to paragraph 62 of the State party's report, please provide further information on the counter-terrorism legal framework, including the definition of terrorism and terrorist activities and the legal safeguards for persons suspected of or charged with terrorist activities or related crimes. Please also elaborate on (a) the concept of "preparation for the commitment of terrorism" (arts. 113 and 299 of the Penal Code); and (b) the difference between "terrorism to oppose the people's Government" (art. 113 of the Penal Code) and "terrorism" (art. 299 of the Penal Code). Please provide information on cases in which terrorist activities have constituted the legal grounds for prosecution and the outcome of those cases.

Right to life (arts. 6, 7, 9, 10 and 14)

8. With reference to paragraph 7 of the Committee's previous concluding observations and to paragraph 67 of the State party's report, please enumerate the crimes which remain subject to the death penalty and elaborate on the criteria and methods of assessment used to determine which crimes qualify as the "most serious crimes". Please provide data on the number of persons executed during the reporting cycle and currently under death sentence. Please also provide information on the detention conditions of prisoners on death row and on existing measures for reviewing death penalty judgments that have been pronounced in violation of the right to a fair trial. Pending the abolition of the death penalty, please provide information on the steps taken towards an official moratorium on executions.

9. With reference to paragraph 15 of the Committee's previous concluding observations, please report on the law and regulations governing the termination of pregnancy and specify the grounds on which abortion is legal. Please elaborate on the measures taken to ensure that women have access to safe and affordable abortion, without discrimination. With regard to article 316 of the Penal Code, please provide statistics on the number of illegal abortions that were carried out during the reporting cycle and the number and nature of convictions for those acts. Please also provide information on (a) the efforts made to further reduce maternal mortality, in particular in rural areas and among ethnic minorities, including measures to ensure effective access to adequate prenatal and obstetric care; and (b) the measures taken to address teenage pregnancy and to ensure countrywide access to adequate sexual and reproductive health education and services.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, treatment of persons deprived of their liberty, including prisoners of conscience (arts. 2, 6, 7, 9, 10 and 26)

10. With reference to paragraph 74 of the State party's report, please provide information on the concrete steps taken towards defining and criminalizing the offence of torture in line with the Covenant and other relevant international standards. Please also clarify the interpretation given by the national courts to "circumstances other than those in which infliction of bodily harm is permitted by law" in article 137 of the Penal Code. Please comment on allegations that torture and ill-treatment by law enforcement personnel are a widespread phenomenon used to obtain information or extract confessions. Please also respond to comments on allegations that (a) torture and ill-treatment of individuals frequently result in deaths in custody; (b) such deaths are commonly reported as suicides; and (c) families are pressured not to challenge such conclusions. With reference to paragraph 74 of the State party's report, please provide data on the number of reported cases of torture and ill-treatment during the reporting period, the number of investigations and prosecutions initiated, the number of convictions, the sentences imposed and the remedies granted to victims.

11. With reference to implementation of the 2004 law on the enforcement of criminal judgment, please elaborate on whether and how the regulations establishing classifications of prisoners are used to facilitate the use of appropriate conditions of incarceration and treatment, in particular circular No. 37 issued by the Ministry of Public Security in 2011. Please comment on allegations that prisoners of conscience are subject to (a) torture and ill-treatment, including incommunicado detention, enforced disappearances, the infliction of severe physical and mental pain and suffering, solitary confinement, denial of medical treatment and punitive prison transfers; and (b) abuses committed by fellow prisoners (antennae) acting at the instigation or with the consent or acquiescence of police or officials.

12. Please provide current data on the total prison population and the official prison capacity, disaggregated by facility. Describe the measures taken to address overcrowding and improve conditions of detention, including with regard to medical care. With reference to paragraph 118 of the State party's report, please clarify whether (a) an independent mechanism has been established to regularly monitor and inspect all places of detention; and (b) monitoring of conditions of detention by independent organizations is permitted.

Forced labour, elimination of slavery and servitude (arts. 7, 8 and 9)

13. With reference to paragraphs 82–92 of the State party's report, please clarify which authorities under what circumstances can impose forced labour on persons deprived of their liberty. Please comment on reports that State-run drug rehabilitation centres use forced labour as "therapy", exploit persons as labourers making goods for local markets and export, and abuse persons refusing to work. With reference to paragraph 83 of the report, please provide updated information, disaggregated by age, sex and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences that have been imposed in cases of human trafficking for the reporting period. Please also provide information on the definition of trafficking in persons and on its compatibility with international standards. Please provide information on the measures taken to ensure effective implementation of the law on the prevention and combating of human trafficking and of the new provisions of the Penal Code that criminalize human trafficking. Please describe the existing mechanisms aimed at the prevention and early identification of cases of human trafficking and at referring, assisting and supporting victims of trafficking, measures to strengthen and effectively enforce them and measures aimed at encouraging victims to access protection services.

Liberty and security of person (arts. 2, 9 and 14)

14. With reference to paragraph 8 of the Committee's previous concluding observations, please report on the measures taken to ensure that in practice, arrests are based on warrants or judicial decisions. Please also provide information on the measures taken to ensure that (a) arrested persons are afforded fundamental legal safeguards from the very outset of the deprivation of their liberty, including the right to notify family members or third persons and the right to have access to a lawyer, including in cases related to national security; and (b) persons arrested on a criminal charge are brought promptly before a judge. With reference to paragraph 96 of the State party's report, please provide further information on the regulations regarding temporary detention, on the maximum length of pretrial detention, including for "national security offences", and on measures in that regard to ensure that the Covenant is respected in practice. Please comment on allegations that the authorities use lengthy periods of pretrial detention to extract confessions. With reference to paragraph 101 of the State party's report, please provide further information on avenues open to detainees for challenging the lawfulness of their detention before a court. Please elaborate on the steps and measures taken to (a) implement opinions adopted by the Working Group on Arbitrary Detention, in particular regarding the arbitrary detention of Nguyen Ngoc Nhu Quynh (opinion No. 27/2017), who blogs under the pen name "Me Nam" (Mother Mushroom); and (b) release all individuals arbitrarily detained in connection with "national security offences" and grant compensation to them. Please comment on allegations that administrative detention, particularly in drug detention centres, and house arrest are still a common practice.

Right to a fair trial and independence of the judiciary (art. 14)

15. With reference to paragraphs 9–10 of the Committee's previous concluding observations, please report on concrete measures to ensure in practice the full independence and impartiality of judges from the ruling party and the executive branch, including the procedures for appointing and dismissing judges. Please comment on allegations that (a) most of the high-level positions in the judicial system are held by current or former officials from the Ministry of Public Security and the Communist Politburo; and (b) judges commonly seek the opinion of other judges who have not heard the case in question on how to decide on a case. With reference to paragraph 150 of the State party's report, please provide further information on concrete measures to (a) ensure access to justice for all and ensure awareness of the right to legal aid, particularly among the most vulnerable groups; (b) restore citizens' trust in national courts; and (c) expand the pool of qualified lawyers and legal advisers capable of assisting people in enforcing their rights.

16. Please comment on allegations that defence lawyers are frequently (a) prevented from consulting with clients until the beginning of the trial; (b) provided with insufficient time to prepare legal arguments; (c) prevented from obtaining access to evidence; and (d) unaware of the witnesses to be called during a trial and unable to cross-examine or challenge their statement. Please also comment on allegations of violations of the equal status principles for the prosecution and the defence, in particular that judges arbitrarily (a) silence or expel defence lawyers from courtrooms; and (b) refuse to summon experts and witnesses called by the defence. Please report on the existence of remedies for persons whose right to a fair trial has been violated. Please also elaborate on the provisions of article 19.3 of the Penal Code, which may require lawyers to violate lawyer-client confidentiality. Please comment on reports that trials resulting in harsh criminal penalties are frequently conducted within one day or less. Please provide information on allegations of recurrent denials of the presumption of innocence in practice, in particular in national security cases and that article 74 of the Criminal Procedure Code allows for postponing the participation of defence counsel until the conclusion of the investigation.

Freedom of conscience and religious belief (arts. 2, 18, 26 and 27)

17. With reference to paragraphs 16–17 of the Committee's previous concluding observations, and paragraph 167 of the State party's report, please further elaborate on the elements of the law on religion and belief of January 2018, particularly in relation to lifting restrictions on religious freedom. Please elaborate in particular on (a) the definition of religion in the new law; (b) the process to obtain registration and recognition for religious organizations; (c) the ability to challenge the refusal of the Committee for Religious Affairs to approve registration at the national or regional level; (d) the mandatory requirement of prior approval for religious activities from the authorities, including activities related to worship; and (e) restrictions on religious freedoms permitted in practice under the "national security" and "social unity" provisions of the law. With reference to paragraph 169 of the report, please provide information on any plans for adopting legislation recognizing the right to conscientious objection to military service and introducing an alternative civilian service for conscientious objectors.

18. Please comment on reports that leaders and followers of religious groups, particularly non-registered ones, continue to be forced to renounce their faith, are subject to surveillance and are intimidated, harassed, detained, tortured and convicted on the ground of "national security offences", particularly among the Degar/Montagnard and Hmong minorities. Please also comment on reports of disruption of religious services, the denial of access to education, notably for children whose parents are Christian, forced relocations of religious communities, the destruction of religious edifices and the confiscation of lands and expropriation of properties targeting religious communities and followers of religious groups on purpose. Please comment on allegations of public defamation campaigns in the media against religions and religious communities and calls from high-level officials to eliminate certain religious communities.

Freedom of expression and the right to privacy (arts. 17 and 19)

19. Please comment on the reports of a crackdown on freedom of expression between January 2017 and April 2018. With reference to Penal Code article 109 on "Activities against the people's Government"; article 116 on "Sabotaging implementation of solidarity policies"; article 117 on "Making, storing, spreading information, materials, items for the purpose of opposing the State of the Socialist Republic of Vietnam"; and article 331 on "Abusing democratic freedoms to infringe upon the interests of the State, lawful rights and interests of organizations and/or citizens", please (a) elaborate on their compatibility with the Covenant, and in particular with article 19; (b) comment on reports that they have been used as a tool for political retaliation and to arbitrarily arrest, detain and convict human rights activists, dissidents, members of religious groups, ethnic minorities and members of non-governmental organizations; and (c) indicate the number of persons convicted under these provisions and any measures taken towards their release.

20. Please provide information on the new cyber security law, adopted on 12 June 2018, and elaborate on its compatibility with articles 17 and 19 of the Covenant, including the principles of necessity and proportionality, particularly the provisions that (a) define legal and illegal content in cyberspace; (b) require companies to deny service, censor or inform the Government about persons publishing forbidden content; and (c) require companies to store individual information related to national security. Please describe the legal safeguards that ensure that decisions infringing on freedom of expression and the right to privacy are subject to judicial review. With reference to paragraph 189 of the State party's report, please (a) comment on allegations that the Internet is strictly monitored and provide data on the number of blogs or websites blocked during the reporting period and the reasons; and (b) explain the mandate and practice of "security cyber units" which monitor the use of the Internet by citizens. Please also provide information on the measures taken to enhance the right to access information, including the effect in practice of the 2016 law on access to information. With reference to paragraph 187 of the State party's report and to paragraph 19 of the Committee's previous concluding observations, please describe the steps taken towards the promotion of openness and pluralism in the media, including the current number of private media. Please provide further information on the legal framework regulating State control over the media, including the 2016 press law, and comment on allegations of sanctions being applied to the publication of content that does not meet governmental approval.

Human rights defenders (arts. 6, 7, 9, 12, 14 and 19)

21. Please comment on reports of politically motivated cases of torture and ill-treatment of human rights defenders, activists, bloggers and journalists by plainclothes police officers or groups of thugs, in total impunity. Please provide detailed information on detailed or planned measures to protect human rights defenders, activists, bloggers and journalists from violence, harassment and intimidation.

22. Please provide further information on decree No. 136/2007/ND-CP and comment on allegations that activists and human rights defenders are commonly banned from international travel under decree No. 136. Please also comment on allegations that activists and human rights defenders are placed on probation or under house arrest when released from custody in order to restrict their movements.

23. Please comment on allegations that lawyers representing activists, human rights defenders or any other cases related to "national security offences" are arbitrarily arrested, detained, threatened with disciplinary sanctions and disbarment, disbarred, wrongfully prosecuted on fake charges, such as tax evasion, and are subject to harassment, retaliation and physical attacks, including by the police authorities, with complete impunity for the perpetrators. Please provide detailed information on the introduction of any safeguards to prevent such occurrences, ensure the full independence of lawyers and protect them from retaliation.

Freedom of association and peaceful assembly (arts. 7, 9, 21 and 22)

24. Please provide information on the steps taken to revise regulations and practices that restrict freedom of association, including removing (a) difficult registration processes for independent organizations; and (b) restrictions on organizing or carrying out political, religious or other activities that are inconsistent with State interests or the security, defence and "great unity of the Vietnamese people" (art. 4 of decree No. 12). Please provide information on the status of "associations with special characteristics" that would be privileged. Please comment on concerns that the proposed amendments to the anti-corruption bill and the decree on the management and use of non-governmental foreign aid could place further restrictions on and control over the operation of associations. Please provide information on the number of national associations working on the protection and promotion of human rights.

25. With reference to paragraph 21 of the Committee's previous concluding observations and pending the adoption of a law on demonstrations, please comment on allegations that freedom of assembly remains restricted. Please elaborate on decree No. 38/2005/ND-CP and related regulations that state that for gatherings of five persons or more, prior notice must be given to the competent People's Committee. Please provide data on the number of applications made for peaceful assemblies and the number of applications granted within the reporting period. Please comment on reports that workers and labour activists have been subjected to intimidation, harassment and arrests after they raised concerns about working conditions and also report on regulations governing the establishment of independent trade unions and the protection of their activities. Please comment on allegations of excessive use of force and arrests by law enforcement authorities to disrupt demonstrations opposing land dispossession and demonstrations related to the Formosa steel plant ecological disaster.

Right to participate in public life and combating corruption (art. 25)

26. Please report on the measures taken to (a) encourage and promote political pluralism; (b) ensure free and genuine elections; and (c) ensure that the right of citizens to stand for election is not made conditional on approval from the Communist Party of Viet Nam or on political affiliation with the party. Please also clarify whether all persons serving prison sentences have their right to vote and to be elected suspended. Please provide information on the existence and mandate of an independent national electoral commission and on the existence and mandate of an electoral complaints commission, or any similar mechanism in charge of reviewing electoral disputes, and the conditions for referral to it. Please elaborate on the measures aimed at combating corruption, in particular bribery of public officials, that influences the conduct of public affairs and undermines the rule of law, and comment on allegations that current anti-corruption measures are selective, and misused in order to target and discredit certain individuals.

Rights of minorities (arts. 2 and 27)

27. With reference to paragraph 19 of the Committee's previous concluding observations, please comment on reports that ethnic minority communities are among the poorest and suffer discrimination based on stereotypes; religious persecution; the suppression of their cultural traditions; arbitrary arrest; the expropriation of ancestral lands and displacement, including for development projects and the construction of hydropower dams, in many cases without prior consultation or the provision of adequate compensation. With reference to paragraph 233 of the State party's report, please comment on allegations of the absence of consultation with relevant groups prior to administrative decisions being taken on the seizure of lands. Please also report on the measures taken to end the persecution of the Degar/Montagnard people. With reference to paragraph 244 of the report, please provide information on any measures planned for the establishment of an agency to effectively monitor the rights of ethnic minorities and adopt comprehensive legislation to protect their rights.